

Application Serial Number 09/966,435
Response to Office Action
Dated March 17, 2005

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REMARKS / DISCUSSION OF ISSUES

Claims 1-20 are pending in the application. Claims 1, 11 and 14 are in independent form.

Applicants gratefully acknowledge the indication of acceptability of the drawings filed on September 28, 2001.

Allowable Subject Matter

Applicants gratefully acknowledge the indication of allowability of the subject matter of claims 6-10, 12 and 18-20.

Rejections under 35 U.S.C. § 102

Claims 1,3-5, 11,13,14,16 and 17 were rejected under 35 U.S.C. § 102(e) as being unpatentable over *Wiser, et al.* (U.S. Patent 6,385,596). For at least the reasons set forth below, it is respectfully submitted that the rejected claims are patentable over the applied art.

A proper rejection for anticipation requires, as the first step in the inquiry, that all the elements of the claimed invention be described in a single reference. A necessary corollary to the test of anticipation is that the absence from the reference of any claimed element negates anticipation.

Claim 1 is drawn to a method of attacking a screening algorithm. The method includes, *inter alia*, *marking content to be downloaded*; and *inserting at least one section of legitimate content into the marked content*.

Claims 11 and 14, drawn to an apparatus and an article of manufacture, respectively, each include a similar feature as that of claim 1.

It is respectfully submitted that the applied reference to *Wiser, et al.* lacks at least the disclosure of the noted features of claims 1, 11 and 14. The Office Action asserts that the reference to *Wiser, et al.* discloses "...marking content (col. 17, lines 22-28, and inserting at least one section of legitimate content into

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the marked content..." The Office Action refers to column 17, lines 7-15 of *Wiser, et al.* for further support for this assertion.

The reference to *Wiser, et al.* is drawn to a computer implemented online music distribution system. Beginning at column 17, line 7, which is relied upon by the Examiner in rejecting the independent claims, *Wiser, et al.* discloses a content manager 112 that looks up a received ID in a media information database 106 to confirm that a song is available for purchase. If so, a voucher packet is returned to the merchant server 132. If not, a message indicating an error or the unavailability of the requested song to the merchant server 132. The reference also describes a process of providing a voucher ID with the voucher packet to track a reservation, schedule the reservation and provide the requisite authorization for the reservation. Finally, a token is issued to allow the download. Accordingly, *Wiser, et al.* describes a request, authorization and download procedure for garnering music by a merchant server. (Kindly refer to column 17, lines 7-25 for support for the assertions above.)

Notably, the reference to *Wiser, et al.* lacks at least the disclosure of *marking content to be downloaded and inserting at least one section of legitimate content into the marked content*. For example, in an illustrative embodiment described in connection with Fig. 1 of the filed application, legitimate music 18 is inserted and a download process is carried out. The marking and subsequent insertion of at least one section of legitimate content is neither taught nor suggested by *Wiser, et al.*

Furthermore, claims 1, 11 and 14 each feature screening the marked content. The noted portion of *Wiser, et al.* describes a request and subsequent authorization process to provide downloads to a merchant server. The reference notes that some music may not be for sale, but does not describe screening specifically recited in the independent claims.

For at least the reasons set forth above, it is respectfully submitted that the reference to *Wiser, et al.* lacks the disclosure of at least one feature of each of independent claims 1, 11 and 14. Therefore, a rejection of these claims

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based on the reference to *Wiser, et al.* is improper and should be withdrawn. Accordingly, because a proper prima facie case of anticipation has not been established, claims 1, 11 and 14 and the claims that depend therefrom are allowable over the applied art. Allowance is earnestly solicited.

The above traversal notwithstanding, Applicant specifically traverse the rejection of claims 3, 13 and 16, which depend from claims 1, 11 and 14. Claim 3 further defines the screening algorithm featuring that *the screening algorithm relies on a sampling of data contained within the marked content*. Claims 13 and 16 include a similar feature.

The Office Action relies on column 7, lines 7-9 of *Wiser, et al.* in an attempt to reject these claims. This portion of *Wiser, et al.* describes processing images to provide different quality levels on playback, using different sampling rates and compression levels. An encoding sequence is described thereafter. While sampling is described in the noted portion of *Wiser, et al.*, this sampling is effected to provide different quality levels and has no relation to a screening algorithm. Therefore, it is respectfully submitted that the reference to *Wiser, et al.* lacks the disclosure of at least one feature of claims 3, 13 and 16. As such, a rejection based on the reference to *Wiser, et al.* is improper and should be withdrawn. Accordingly, because a proper prima facie case of anticipation has not been established, claims 3, 13 and 16 and the claims that depend therefrom are allowable over the applied art. Allowance is earnestly solicited.

Rejections under 35 U.S.C. § 103

Claims 2 and 15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Wiser, et al.* and Official Notice taken by the Examiner. For at least the reasons that follow, it is respectfully submitted that this rejection is improper and should be withdrawn.

First, it is noted that claims 2 and 15 depend from independent claims 1 and 14, respectively, which are patentable over the applied art for at least the

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reasons set forth above. Accordingly, these claims are allowable at least because of their dependence on allowable base claims.

Second, Applicants respectfully traverse the rejection based on Official Notice. Official Notice by the Examiner implies knowledge of subject matter from the personal knowledge of the Examiner or information well-known in the art. In order to support such a rejection either extrinsic evidence or an affidavit from the Examiner is required. To this end, it is respectfully submitted that sufficient evidence in support of the Official Notice has not been provided. If the assertions relating to Official Notice set forth in the Office Action are based on personal knowledge of the Examiner, an affidavit under 37 CFR § 1.104(d)(2) is respectfully requested. Otherwise, some other form of extrinsic evidence in support of this assertion is respectfully requested. If evidence in support of the assertions of the subject matter of the Official Notice are not provided it is respectfully submitted that the rejections based thereon be withdrawn.

Conclusion

In view of the foregoing, applicant(s) respectfully request(s) that the Examiner withdraw the objection(s) and/or rejection(s) of record, allow all the pending claims, and find the application in condition for allowance. If any points remain in issue that may best be resolved through a personal or telephonic interview, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

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Respectfully submitted on behalf of:

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Date: June 17, 2005

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